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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

19 CR 870 (JMF)

Telephone Conference

5 MUSTAPHA RAJI,

6 Defendant.

7 -----x

8 New York, N.Y.

9 May 26, 2020

2:04 p.m.

10 Before:

11 HON. JESSE M. FURMAN,

12 District Judge

13 APPEARANCES VIA TELEPHONE

14 GEOFFREY S. BERMAN,

15 United States Attorney for the

Southern District of New York

16 EUN YOUNG CHOI

Assistant United States Attorney

17 ROTHMAN, SCHNEIDER, SOLOWAY & STERN, LLP

18 Attorneys for Defendant

19 BY: JEREMY SCHNEIDER

RACHEL PERILLO

20
21 ALSO PRESENT: FRANCESCA PIPERATO, Pretrial Services

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(The Court and all parties appearing telephonically)

THE COURT: Good afternoon. This is Judge Furman.

Let me confirm that the court reporter is on the line. Rose, are you there?

THE REPORTER: Yes, your Honor. I'm here.

THE COURT: Good. Good afternoon to you.

And for the government, if someone could state appearances?

MS. CHOI: Good afternoon, your Honor. This is EunYoung Choi for the government.

THE COURT: Good afternoon, Ms. Choi.

And for the defendant?

MR. SCHNEIDER: Afternoon, your Honor. Jeremy Schneider and Rachel Perillo for Mr. Raji. Good afternoon to you, your Honor.

THE COURT: Good afternoon to you as well.

Let me run through a few preliminaries. I hope that everyone is safe and well. First of all, just a reminder to state your name before you say anything, just to confirm that we know who is saying what.

No. 2, when you're not speaking, please place yourself on mute so that there's no background noise, but remember to unmute yourself if you want to say something.

Third, if there's a chime during the call, that means that somebody has called in or dropped out, and I will pause to

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1 figure out what's going on. I should also warn you that one or
2 two times I've been disconnected from telephone conferences.
3 If that happens, then stay put and I will make my way back to
4 you.

5 I should also remind you that this is a public
6 proceeding, as it would be if it were being held in the
7 courtroom; so someone could well be listening in from the
8 public. Just keep that in mind, and with that, I think we can
9 proceed.

10 I'm also told by my deputy that pretrial services is
11 on the line. I don't know if the officer wants to state his or
12 her appearance.

13 MS. PIPERATO: Good afternoon, your Honor. Francesca
14 Piperato from Pretrial Services.

15 THE COURT: Good afternoon. Could you just spell your
16 last name?

17 MS. PIPERATO: Yes. P -- as in Peter -- i-p -- as in
18 Peter-- e-r-a-t -- as in Tom -- o.

19 THE COURT: Good afternoon to you. I hope you're safe
20 and well.

21 MS. PIPERATO: Thank you.

22 THE COURT: Mr. Schneider, let me confirm with you
23 that we have the defendant's consent to proceed by telephone
24 and in his absence, given the circumstances that we are dealing
25 with in the wider world?

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1 MR. SCHNEIDER: Good afternoon, your Honor. Again,
2 yes, this is Jeremy Schneider speaking. I have spoken to
3 directly to Mr. Raji, as well as Ms. Perillo speaking to him.
4 He has been informed of his right to be present at all
5 proceedings and as well to be present for this particular
6 application. He has knowingly, intelligently and voluntarily
7 waived his presence for this proceeding.

8 THE COURT: All right. Thank you.

9 And does everybody agree, under the CARES Act, I do
10 have authority to conduct this proceeding by telephone, if
11 video is not, quote unquote, reasonably available, given the
12 circumstances and the limited options for dealing with these
13 things by telephone? I'm prepared to make a finding that it's
14 not reasonably available, and we can proceed by telephone. Is
15 that good with the government?

16 MS. CHOI: Yes, your Honor.

17 THE COURT: Mr. Schneider?

18 MR. SCHNEIDER: Yes, your Honor.

19 THE COURT: All right. With that, then let's proceed.

20 At the outset, Mr. Schneider, let me just confirm what
21 the procedural basis is for your application, since I'm not
22 sure it was spelled out in your motion. As the government
23 noted, I think there are two plausible bases: One is a motion
24 pursuant to 3142(f), to reopen the bail hearing, which requires
25 a showing of changed circumstances that would have a material

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1 bearing on the issues under 3142; and the second is under
2 3142(i), that allows for temporary release for compelling
3 reasons.

4 Can you just clarify which of those grounds you're
5 seeking bail on or both?

6 MR. SCHNEIDER: I'm glad you added the last thing. It
7 is on both grounds, your Honor. I do believe that there are
8 compelling reasons, as well as changed circumstances which
9 would allow you to make decisions on Mr. Raji's bail.

10 THE COURT: All right. So then let's take them one at
11 a time. First, start with 3142(f). Can you just tell me what
12 the changed circumstances are?

13 I certainly recognize that the pandemic is a changed
14 circumstance, but under that provision, if I'm not mistaken, it
15 requires a showing that the change has a material bearing on
16 essentially the risk of flight or the danger to the community.
17 And how is that the case here?

18 MR. SCHNEIDER: Okay. Actually, I was going to do the
19 changed circumstances at the end. I just need to reshuffle my
20 papers; so give me one second, your Honor.

21 Okay. I think it's clear that the main change to
22 circumstance is the Covid pandemic and given the fact that --
23 and it's our position that MCC is not equipped -- whether it's
24 unwilling or unable, that doesn't matter -- to deal with
25 Mr. Raji's medical condition because of this pandemic. I think

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1 that's significant.

2 And I just think one of the interesting parts is that
3 when Mr. Raji was in Florida, before he was brought here to
4 this district, he had seen the doctor every three days in Miami
5 for two weeks. In fact, yet, he has not seen a particular
6 actual doctor in MCC. So you have the Covid pandemic, No. 1.

7 No. 2, you have Mr. Raji's possible deteriorating
8 medical condition because of MCC's inability to deal with his
9 present condition. I also believe that at the time of the
10 initial bail hearing -- by the way, in our letter we said this
11 is our first request for bail. It turns out that we were
12 wrong. I meant to say it was our first request in this
13 district.

14 We have learned that, in fact, there was a detention
15 hearing -- and I use that word, that phrase in quotes -- in
16 Florida before the judge there. And we have reviewed the
17 judge's decision, the detention decision in that detention
18 order in that matter. But what's different is that at the time
19 being there were no medical records.

20 I just heard a bleep. Should I stop?

21 THE COURT: No, I think you're good. Go ahead.

22 MR. SCHNEIDER: Okay, I'm sorry.

23 At the time of the hearing, there were no medical
24 records available to the judge. There was no information about
25 the co-defendant's arrest, which we cited to in our letter,

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1 indicating that she had been arrested in, I think it was,
2 September of 2018, and our client knew about it. And,
3 therefore, would have known that he could have fled if he was
4 going to flee there.

5 Really, also, there was also no substantial bail
6 package presented at the time because it was one of those
7 initial presentments. They really didn't have much information
8 at the time. The CJA attorneys representing Mr. Raji didn't
9 really have a chance. I'm not blaming anybody, but just given
10 the circumstances, he didn't really have much time to speak to
11 people, to get a package.

12 We have presented a package of two responsible
13 individuals who are financially responsible and who are both
14 working. So we have that. And also, we're suggesting home
15 incarceration with electronic monitoring.

16 So I think those factors all together -- just for the
17 government to rely on the initial application and the judge's
18 detention order, I think is not really evaluating the entire
19 case, given that now that we're in MCC, now that we have the
20 Covid pandemic, now that we have more specific information
21 about Mr. Raji's medical condition and how he has been treated
22 at MCC, I think those are very compelling factors which, in my
23 view, overcome any risk of flight.

24 I don't think danger to the community was ever at
25 issue, but if it is, I can address that as well. But I just

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1 don't think it was or is. But I think the changed
2 circumstances, in my view, are what I just indicated to the
3 Court.

4 THE COURT: All right. Let me ask you about some
5 things that you raised; first are his medical conditions, and
6 second, his alleged lack of seeing a doctor, et cetera.

7 No. 1, both seem to be belied a little bit by the
8 medical records and the evidence submitted by the government
9 which suggests, No. 1, that his conditions aren't perhaps as
10 severe or even as they are described in your letter, in
11 particular, the congestive heart failure possibility.

12 No. 2, suggest that he is being monitored and
13 addressed, his medical circumstances are being addressed. For
14 instance, you know, that he is getting his pills and that those
15 claims are not borne out by the record.

16 And then, third, to the extent that that isn't the
17 case, wouldn't the first remedy or step be for me to enter some
18 sort of order directing that he be provided with whatever
19 medical care he should be provided, which certainly happens, as
20 you know, in the normal course. And it may be it's true that
21 they can't provide for him under the current circumstances,
22 given the pandemic, but it seems like that would be the sort of
23 right first move if he's not getting the care that he needs at
24 present.

25 So can you address those things?

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1 MR. SCHNEIDER: Certainly, your Honor. Okay. It's
2 funny because, at first blush, when you read the government's
3 letter and look at the few citations that she -- I'm sorry, not
4 "she," but that the government refers to certain, I want to
5 say, inconsistencies in the medical records. If you look a
6 little bit closer, it's not really as clear as the government
7 makes it sound.

8 And let me, if I may, just cite to your Honor what I
9 believe his condition is and then what I think the medical
10 records show that the government puts forth to the Court, to
11 the Judge, your Honor.

12 No. 1, the phrase "congestive heart failure," the
13 government's position is that it may be, may be, it's the BOP's
14 belief, that that may be self-reporting. I can't imagine
15 somebody walking into a doctor's office or walking into a
16 hospital and say: Hi, Doctor, my name is Mustapha Raji, and I
17 have congestive heart failure. It seems to me that that
18 doesn't make sense, but let's move past that, if you want.

19 You do have something that the government agrees is
20 non-ischemic cardiomyopathy. He was hospitalized for that in
21 December 2017. He has heart failure, systolic failure, acute
22 exacerbation of systolic heart failure. He was hospitalized
23 for that in August of 2019.

24 And how about the fact that when he was arrested in
25 December of -- on this case, December 20th, I believe, and he

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1 was brought in to custody in Miami, whether it's Broward or
2 Miami, he was in the ICU for four days. He was in the
3 infirmary for one month. He also had a scheduled test in
4 January of this year, but he couldn't make it because he was in
5 jail, for a possible stent and a pacemaker.

6 So it seems to me that the government is saying, yes,
7 he has heart issues, but you know what, it's not serious
8 enough. It seems like, based on the records, they are serious.

9 He also has essential hypertension, which is I think a
10 fancy way of saying high blood pressure, but he had dangerously
11 high blood pressure and that's why he was in the ICU when he
12 was in custody down in Florida.

13 He is also obese. Again, the government says, yes,
14 he's overweight but not overweight enough. I also think the
15 government kind of ignores his kidney disease. He has Stage
16 III chronic kidney disease. The government again says, oh,
17 yes, he has kidney disease --

18 THE COURT: Hold on. Did somebody just join this
19 conference?

20 Let me just make sure that everyone is still present.
21 First of all, is the court reporter still here?

22 THE REPORTER: Yes, your Honor. I'm still here.

23 THE COURT: All right. Ms. Choi, are you still on?

24 MS. CHOI: Yes, your Honor.

25 THE COURT: All right. And, Mr. Schneider, you're on;

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1 so I guess we can continue. Go ahead. Okay. The government
2 says, yes, he has kidney disease, but he's not on dialysis;
3 therefore, it's not serious enough. Well, I think in our
4 letter we indicated that research shows that Covid can cause
5 kidney disease. So clearly, if it can cause kidney disease,
6 you would think it makes sense that it could clearly exacerbate
7 it if you already have Stage III chronic kidney disease.

8 It appears to me like the government is asking your
9 Honor to say that the only time that we should take these
10 medical conditions into consideration, and they're only serious
11 enough, is if you would have an outright heart attack or if he
12 had kidney failure. So it just seems to me -- like, on the one
13 hand, they're acknowledging that he has these diseases or
14 conditions, and on the other hand, saying it's not really that
15 bad.

16 So let's take a look at the records that the
17 government submitted. It seems like when you first read the
18 government's letter, that he has been seen by a doctor or
19 doctors a number of times and has received treatment. He has
20 never once seen an actual, physical doctor when he was in MCC.
21 He did see a doctor in Miami. He did see a doctor every few
22 days in Miami, but not in the MCC. The government was very
23 clear. They said he'd been monitored by doctors. Okay; so
24 that's No. 1.

25 No. 2, he did see some of the medical staff, not a

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1 doctor, and I don't even believe a nurse, the day he entered on
2 February 4th, 2020. That was a quick evaluation and his blood
3 pressure was taken on that date. The date after he arrived, on
4 February 5th -- by the way, this is -- I think it's at page 6
5 not of the letter but of the BOP medical records.

6 And the government didn't refer to this February 5th
7 notation, but it's a notation that says: Need to follow up
8 with cardiac clinic. Guess what? That has not happened,
9 whether, if ever, in New York.

10 February 12th there is a notation that says: Patient
11 was enrolled in cardiac clinic prior to arrival and needs to be
12 enrolled in HTN clinic. Guess what? That has not happened.

13 It also says: Blood tests needed. Scheduled for
14 March 11th. March 11th has come and gone. He has not had a
15 blood test.

16 On April 2nd of 2020 -- yes. I'm sorry. Let me back
17 up. I think it was April 14th the government refers to his
18 blood pressure or medication had been changed. Let's be clear
19 why. On April 2nd, which is page 52 of the records, his blood
20 pressure medication was adjusted because his blood pressure was
21 taken at his insistence during a routine Covid symptoms check
22 at his own cell.

23 Okay? At that point, as your Honor knows, people at
24 the MCC go around from cell to cell periodically and have some
25 checks. He doesn't go to the clinic. He didn't have a doctor

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1 come see him. He didn't go see a doctor. At his cell someone
2 came for a routine Covid symptoms check, and here, the
3 defendant said: Please take my blood pressure.

4 As a result of his insistence and outright luck, I
5 think, that there was a routine check that happened to come to
6 his cell, his medication was changed on April 14th. That's the
7 only date. Period.

8 There's a notation the government refers to an
9 May 18th. Okay? Well, you know what, blood tests that were
10 originally scheduled for March 11th, those blood tests were
11 still not done as of May 18th. They were rescheduled for
12 June 16th. The notation says: Overdue lab. That needs to be
13 reconciled in BEMR.

14 He has not received a healthy diet, either for his
15 heart, his blood pressure or his kidneys. I don't care how
16 many times the BOP tells the government that they're doing it.
17 He has not, for weeks and weeks, up until recently, they were
18 only serving baloney sandwiches for dinner to the inmates. So
19 let's just be clear -- I'm sorry.

20 THE COURT: Let me interrupt you for a second. So I
21 hear you, but if you could, No. 1, address my question about to
22 the extent that that's all correct and concerning, isn't the
23 first course of action to try and get him whatever medical
24 attention and care he needs in the MCC, rather than to
25 disregard what may well be a genuine flight risk;

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1 And, No. 2, some of those dates and delays that you
2 cited go back as far as February, which was actually before the
3 pandemic really hit in full force and is close to three months
4 before you wrote your letter. So I guess that raises the
5 question of why, did you wait until May 18th? If he's not
6 getting medical care for the last three months, why did it take
7 you until May 18th to seek bail and seek his release on that
8 basis?

9 MR. SCHNEIDER: Okay. I have a few answers to that.
10 No. 1, the reason I'm mentioning these dates, the
11 February 12th, April 2nd, April 14th and May 18th, because
12 those are the specific dates that the government mentioned in
13 her letter. That's why I referred to those dates. So that's
14 that part.

15 And why did I wait so long? Because, as your Honor
16 knows, we cannot visit our clients. So it takes a long time,
17 sometimes days if not weeks, to schedule a phone calls. We
18 scheduled phone calls. We had phone calls with both him and
19 his family. We also tried to negotiate with the government to
20 see if they would consent. That took time between them getting
21 back to us, them having to confer with their supervisor, us
22 deciding what to do. And we had to try to contact the lawyer
23 in Florida to see what happened there. So that's why.

24 And we also, I guess, always hoping that there would
25 be some movement by MCC. We had to get these records. We had

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1 to have the family get the medical records and get them to us.

2 It's been difficult to speak to the client, in terms
3 of physically meeting him. We can't. So these phone calls you
4 have to put in a request via e-mail to get a phone call. Then
5 they schedule it sometimes days or even a week or so after
6 that; so that's one problem. So that's why I waited and,
7 again, I referred to those dates because those are the dates
8 that the government referred to.

9 So that's why.

10 THE COURT: All right.

11 MR. SCHNEIDER: If that answered your question. I
12 hope it does.

13 THE COURT: Yes. Although, again, why isn't the first
14 course of action to just try to get him the attention or care
15 he apparently needs?

16 MR. SCHNEIDER: Well, I guess one of the things I like
17 about your Honor is your Honor's optimism, and I guess I just
18 don't see it. You know, your Honor has been....

19 THE COURT: Hello?

20 MR. SCHNEIDER: Can you hear me?

21 THE COURT: I can, yes.

22 MR. SCHNEIDER: Hello? I'm sorry. I apologize. I
23 dropped the phone. Excuse me.

24 Your Honor's been a judge. You were a prosecutor.
25 I've been practicing for many, many years. I think even

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1 anecdotally nobody can say that MCC can do what they're
2 supposed to do. I'm not looking to blame them. It's just the
3 reality.

4 I mean, we all know that people have a hard time at
5 MCC getting medical care, getting the correct food, but besides
6 that, let's also remember, right now it's a petri dish. I
7 mean, what's happening at MCC is just impossible. I would say
8 virtually every factor that the CDC or NIH, or anybody, says
9 you should try to follow to prevent the exposure, to prevent
10 contracting the disease is just the opposite in terms of
11 closeness, the ability to wash, the ability to remain, you
12 know, socially distant, to wear a mask. I mean, it's just,
13 it's impossible. Okay?

14 And what's happening -- and I didn't want to get into
15 all of the numbers, but your Honor has, I'm sure, known the
16 numbers.

17 THE COURT: Yes.

18 MR. SCHNEIDER: I'm not going to get into that.

19 THE COURT: You don't need to get into that. I'm well
20 aware on that front, and I'm hardly an optimist at all. I
21 think I'm on the more pessimistic end of the spectrum with
22 respect to the handling of this.

23 Let me ask you one final set of questions, and then
24 I'll give Ms. Choi an opportunity to respond, which is, just
25 what his circumstances are in Florida? According to the

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1 pretrial services report, he doesn't have any assets. How he
2 has he been affording the apartment he has down there, and how
3 would he continue to do so, and what provisions would he have
4 to get the medical attention he needs down there?

5 The government raised a variety of questions along
6 those lines. If you could just address them, please.

7 MR. SCHNEIDER: Certainly. He has insurance; so
8 that's how he would pay for the medical treatment he needs.
9 His brother, or other relatives, are willing to help, have
10 already been paying the rent since he has been incarcerated and
11 will continue to support him.

12 The friends that we had mentioned in our letter are
13 prepared to take him to his medical appointments, if necessary;
14 so the finances are not a problem.

15 While he doesn't have assets now, he did have some
16 money saved a while ago. That money went to how he lives, but
17 in terms of going forward, his family and friends both are
18 prepared to do what is necessary to support him both
19 financially and emotionally and medically.

20 So that's -- in fact, we had given this information to
21 the government early on. We gave her the names of some of our
22 potential cosigners. She asked us a bunch of questions about
23 what it was, and we answered many of those questions. We even
24 sent her the medical records early on, before we even wrote the
25 letter.

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1 And then after some period of time, she asked
2 questions that I didn't believe were appropriate, or were
3 appropriate at that point. That's when she said, I declined to
4 give the information, and she's right, I did. But I was very
5 clear and I did tell her significant information when she asked
6 initially.

7 And in terms of, you know, where he was, for how long
8 he'd been in Florida, what his ties to the area were, the
9 nature of the cosigners, who he'd be living with. We told her
10 all that. We gave her the medical records. So there is
11 someone, or there are people who are prepared to stand up for
12 him and support him, like I said, financially and medically.

13 THE COURT: And how would he get to Florida? What
14 sorts of plans are there on that front if I were to release
15 him?

16 MR. SCHNEIDER: His brother would make sure he would
17 get a flight. He would fly.

18 THE COURT: Okay. I'm sorry, one last question that
19 just occurred to me, I meant to ask, which is, I gather there
20 is an ICE detainer in effect. Your letter notes that,
21 according to the Federal Defenders, there are nine instances
22 where ICE has declined to enforce the detainer where pretrial
23 bail has been granted.

24 But what sorts of assurances -- I mean, how do you
25 think I should factor that in here? And surely, you wouldn't

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1 want me to release him on bail only to be picked up and put
2 into an immigration facility, which as far as I have heard and
3 can tell, may not be even as good as the MCC?

4 MR. SCHNEIDER: That's my understanding as well.
5 However, I don't know that personally, but that's what I've
6 heard, that he wouldn't want to be there either. My
7 understanding is we're prepared to take that chance. I don't
8 have any hard and fast rule as to who gets picked up on ICE
9 detainers.

10 But my feelings is this is someone who is here from
11 Canada, someone who has traveled back and forth on more than
12 one occasion from Canada. He has a passport that the
13 government has.

14 I don't think he presents any kind of a danger in
15 terms of ICE having him on their radar specifically because of
16 the kinds of crimes he may have committed in the past, because
17 he has no prior record, or because of what they think where he
18 may go. So we're prepared to take that chance. We have
19 discussed it with our client, and he knows that there is a risk
20 that ICE may file a detainer and he may not get out.

21 But he's prepared to take that chance, given --
22 because he knows that we're here now. He's only going to get
23 worse. He's only going to get sicker. So we believe that
24 ICE -- I say -- we hope, I should say, that ICE would not lodge
25 or would let him go, and maybe have him deal with it

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1 voluntarily from the street. And his brother would be the one
2 who would make sure he gets down to Florida in a timely
3 fashion.

4 THE COURT: All right. Ms. Choi, let me turn to you
5 to get your response on, more or less, all these fronts, but if
6 you want to start with the detainer and just tell me what your
7 understanding is of that is, if the information in
8 Mr. Schneider's footnote is accurate and so forth.

9 MS. CHOI: Your Honor, I don't have specific
10 information about the number of people who have not been picked
11 up as it relates to an ICE detainer given the current
12 circumstances. I have been in receipt of communications with
13 ICE which has indicated that they are still picking individuals
14 up pursuant to detainers.

15 Although, as it was the case before Covid, the
16 Covid-19 situation started, a lot of that has to do with
17 resource allocation. So it's true that there is some
18 possibility that any given defendant may not be picked up by
19 ICE pursuant to detainer if they were to be bailed, but that's
20 by no means a one hundred percent guarantee in either
21 direction.

22 So there remains a distinct and I think significant
23 risk that if there was a bail package to be entered in this
24 case, that we would have, you know -- it would lead to
25 potentially ICE picking up the defendant and detaining him for

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1 some period of time, even if he were ultimately bailed by us.

2 So I think the long and short of it is it's not clear
3 that it is happening in every case, but certainly it is
4 happening in some cases, that ICE is picking up people even if
5 they are bailed by the District Court.

6 THE COURT: Okay. And do you want to address the
7 medical conditions? Mr. Schneider certainly is correct that
8 the defendant was hospitalized when he was picked up, I gather
9 in Florida, and I gather had previously been hospitalized.

10 Putting aside, you know, what the source of the
11 congestive heart failure diagnosis is and how much to rely on
12 that, it certainly seems like he has some pretty serious
13 medical conditions. Is that not the case?

14 MS. CHOI: Your Honor, it's true that he has a heart
15 condition and a kidney condition. I think your Honor, though,
16 has narrowed down the question at issue, which is whether or
17 not he could get adequate medical treatment within the
18 facility, especially if your Honor were to facilitate that with
19 some sort of directives to BOP.

20 I would note, with regard to his prior medical history
21 and the fact that he was placed in an infirmary, I don't have
22 access to the earlier medical records because that was not
23 while he was in BOP custody. It was while he was with the
24 marshals in Florida, but nevertheless, all of that prior
25 medical history was taken into account by the magistrate judge.

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1 In fact, it all happened prior to his hearing date.
2 There was a delay between his arrest in December, on
3 December 20th of 2019, and the date of the hearing, which was
4 January 7th of this year. And you can see from the pretrial
5 services report and from the detention order, the magistrate
6 judge understood those medical conditions.

7 So that doesn't represent a changed circumstance, as
8 it were, that deals with, you know, the Covid-19 crisis beyond
9 perhaps the specific requests that Mr. Schneider might have
10 directed at BOP with regard to additional care that he might
11 receive at the MCC.

12 But nevertheless, I think that the medical records, as
13 your Honor notes, I mean, there has been monitoring of his
14 condition. BOP advises that they have assessed his medical
15 condition, and there was some more recent chest X-ray, which
16 notes that there was no evidence of congestive heart failure or
17 heart failure that would require sort of the additional
18 scrutiny that would be involved with someone who is at a high
19 level of additional risk under CDC guidelines, which is the
20 criteria that the BOP is using to characterize individual
21 inmates accordingly.

22 So he's not been determined by medical officials at
23 BOP that have reviewed his records, he's not been determined to
24 be higher risk for Covid vis-a-vis other inmates, even with his
25 heart condition and his kidney condition as set forth in the

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1 government's letter.

2 THE COURT: And do you know if he has seen a doctor
3 since his arrival at the MCC?

4 MS. CHOI: Your Honor, the records themselves reveal
5 that he has. I've asked the MCC to provide all of the medical
6 records and, you know, Mr. Schneider has gone through some of
7 them point by point and characterized them here.

8 But if you look specifically at the entry that's on
9 page 3, for instance, the provider that's specified is a
10 doctor, an MD, which indicates -- I mean, putting aside the way
11 in which Mr. Schneider has characterized the nature of how the
12 BP was taken and the medicine adjusted, it was a provider that
13 the records reveal was a doctor who saw him.

14 And if the question, is if there was specific dietary
15 restrictions or other needs that he needs that haven't been
16 attended to by the BOP, I think in the first instance it would
17 make sense for your Honor to ask the BOP to make sure that
18 they're attended to.

19 THE COURT: All right. Anything else that you want to
20 address that I discussed with Mr. Schneider or otherwise?

21 MS. CHOI: Yes, your Honor. With regard to the
22 circumstances in Florida, I mean, Mr. Schneider made the
23 representations previously that there would be, quote, family
24 members that could help the defendant, and the government does
25 not take much, you know, solace in that simply because there

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1 hasn't been any sort of identification of whether or not
2 that -- where this source of these funds are, including the
3 fact that it was outlined in the government's letter, that at
4 least one of the co-defendants -- one of the defendant's
5 brothers was the recipient of the proceeds of this particular
6 fraud. So that does give the government some pause.

7 The government did ask for additional financial
8 information regarding the two -- the three potential cosigners
9 that were proffered by the defense counsel. We did not receive
10 any of that information, which I think is relevant with regard
11 to determining a determination for temporary release with
12 regard to -- at least procedurally with regard to subsection
13 (i) of the Bail Reform Act.

14 And, your Honor, I think that the representation with
15 regards to health insurance and the like is -- and what kind of
16 care he can receive is sort of an important one simply because
17 the government, in preparing for this hearing today, for
18 instance, tried to run the defendant's name against Court Link,
19 which is the Lexis database of dockets, with regard to either
20 state and federal dockets.

21 And in an attempt to get this docket, I came across
22 two other dockets which appear to relate to the defendant in
23 which he was the subject of removal proceedings, removal of
24 tenancy from his place of residence, one that was dated in
25 early 2019 and one that was appears to be perhaps for an office

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1 area also in 2019. And so I think there is a question with
2 regard to where these resources are coming from, whether or not
3 this defendant is going to, in fact, get better care if he were
4 to leave.

5 There hasn't been, you know, a probation, pretrial
6 service review of the residence at issue in Florida. It's the
7 government's understanding that he would not be living with
8 anyone there. Rather, he would simply have, at the defense's
9 urging, a bracelet, which as the government notes in its letter
10 is not necessarily an indication that the defendant will not,
11 in fact, flee.

12 In fact, there empirically have been multiple
13 instances in which defendants have fled, even with the home
14 detention in place. And we simply think that two cosigners
15 whose relationship with the defendant is unknown, unknown real
16 sources of income with regard to his assets, in combination
17 with his historical difficulty in paying his bills on time,
18 suggest that it's not clear to the government, at least, that
19 release in the first instance makes the most sense here.

20 THE COURT: Okay. I understand that your position is
21 that there are no combination of conditions that could assure
22 his appearance, and I take it you're not arguing danger to the
23 community. But assuming I disagreed, and I'm not suggesting
24 that I am making that assumption or that that assumption is a
25 valid one. I'm, you know, just asking a question.

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1 What comment, if any, do you have on Mr. Schneider's
2 proposed bail package? Are there other conditions that you
3 think would be appropriate in the event that I disagree with
4 you and did decide to release him?

5 MS. CHOI: Well, I think that there needs to be -- the
6 issue that the government raised with defense counsel is that
7 we think at least some collateral is necessary on this bond. I
8 mean, there's not any indication -- putting aside the fact that
9 we haven't even reviewed the financial documents or interviewed
10 these potential two cosigners or understand anything about
11 their relationship with the defendant, putting that aside in
12 the first instance, and whether or not they'd be financially
13 responsible cosigners, there's no incentive for the defendant
14 to stay.

15 If this brother is in fact the brother I believe it
16 is, which is a person that lives in Canada, a country with
17 which the defendant has strong ties, if he is the person who is
18 essentially sending -- allowing for any assets, it seems a
19 little bit strange to the government, at least, that, you know,
20 he could not also put up some sort of financial incentive to
21 keep the defendant in the United States when, for all intents
22 and purposes, he could have equal -- he has an equal risk of
23 flight as he did at the time that he was ordered detained, if
24 not greater.

25 THE COURT: Okay. All right. Anything else you want

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1 to say?

2 MS. CHOI: No, your Honor. If you don't have any
3 other questions for the government, that's it.

4 THE COURT: All right.

5 MR. SCHNEIDER: Your Honor?

6 THE COURT: Mr. Schneider, I have two brief questions
7 for you, and then I'll give you a brief chance to respond, and
8 then we'll close out.

9 MR. SCHNEIDER: Okay.

10 THE COURT: No. 1, 3142(i), on its face, seems to
11 require release to either the United States marshal or another
12 appropriate person, that is, some sort of third-party
13 custodian, but as I understand it, you're proposing that
14 Mr. Raji be released to live by himself. So how does it
15 satisfy that requirement?

16 And, No. 2, could you respond to Ms. Choi's suggestion
17 about posting collateral?

18 MR. SCHNEIDER: Yes. That's why when your Honor asked
19 me at the beginning of the proceeding if I was relying on
20 3142(f) or (i), I said both because (i) does require a marshal
21 or a third person.

22 I mean, I guess I'm not so sure how that necessarily
23 translates because if someone is on home incarceration with
24 electronic monitoring, that may be considered under court
25 supervision. So I've never really thought about it in terms of

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1 interpreting it that way. That could be one view. But even if
2 not, I think that under 3142(f), your Honor doesn't need to
3 find that a third person is available.

4 And regarding collateral, at this point, we don't have
5 collateral but, your Honor, I guess given all of the facts and
6 circumstances, it wouldn't make sense for him to go anywhere.
7 And for the government to talk about the fact that he has some
8 dockets regarding possible removal from his apartment or
9 removal from his office, sounds like eviction notices, which I
10 certainly hope that's not going to be used against anybody ever
11 in deciding if they should remain at MCC when they are in the
12 middle of a health crisis.

13 In terms of the source of the funds, of course, the
14 government has a right, and we welcome them interviewing the
15 cosigners once your Honor sets the bail. I mean, obviously,
16 the request is to have, you know, three, we always say,
17 financially responsible people as cosigners, or two, whatever
18 the number is, right? We are offering two.

19 And we're offering -- we gave the names. We told you
20 how much they made. And, obviously, before they should be
21 accepted by the government or by the Court, more importantly,
22 they will be interviewed, and they will provide supporting
23 documentation to the government to show the source of the
24 funds.

25 And I think that seems to me to make the most sense,

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1 that if your Honor sets our -- sets bail as we request, then
2 the information, as is the case in every situation bail
3 package, the government has a chance to interview them, whether
4 it's in person, on the phone, whether the people have to be
5 interviewed by people down in Florida, whatever it is. That
6 has been done.

7 And for the government to cite in the letter all the
8 times people who are out on bail and ran away, I don't even
9 know what that means because how many times have people been
10 out on bail that they return? So that just made no sense to me
11 at all. This is someone who is a responsible person, who has
12 absolutely no prior criminal record.

13 Can you hear me, your Honor?

14 THE COURT: Yes.

15 MR. SCHNEIDER: Oh, I'm sorry. Okay. He has no prior
16 criminal record at all. Not no convictions, no record, and
17 there's no violence.

18 So let's keep our perspective, in my view, and realize
19 that for someone -- for the government to say, well, he'll
20 probably get the good care that he needs in MCC better than if
21 he was home, I don't think they -- I don't want to say they
22 don't believe it. I think it really flies in the face of
23 reality when you have people -- when he, himself, has an
24 interest in taking care of himself, when his friends and family
25 have an interest in taking care of him, when MCC does not have

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1 the same interest or the same capabilities.

2 And why don't we have to wait X number of months for
3 your Honor to order MCC to get somebody's medicine. It
4 shouldn't be difficult. It shouldn't be a concern. It
5 shouldn't be a problem. We shouldn't have to have a hearing
6 for you to tell MCC, make sure this guy gets the appropriate
7 medical treatment.

8 So all that being said, while we can't control the
9 pandemic, we can control where people live, and hopefully, in a
10 way that can control the future. You know, every time people
11 talk about the pandemic, it's a question of risk and
12 prevention. What's the risk of him getting it, and what can we
13 do to prevent or minimize that risk? And I think if you look
14 at it that way, letting him go home, where he can go see his
15 doctors, as according to his own pretrial said so; when he can
16 get the treatment he needs; when he gets the tests he needs;
17 when he can get take the medicine not a day or two late; when
18 he can eat the food; when he can do all he has to do to
19 maintain his health, it seems to me that that the
20 risk-prevention analysis weighs in his favor. Thank you, your
21 Honor.

22 THE COURT: All right. Thank you very much.

23 I am going to reserve decision. I'd like to think
24 about it a little bit and reflect. I think it's definitely a
25 close call in either direction, or a close call period in that

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1 sense, in it could go either direction. But I'd like to think
2 about it and we'll reserve judgment.

3 Ms. Choi, I would like you, in the meantime, to
4 contact folks at the MCC and get whatever information you can
5 concerning, No. 1, whether and to what extent his medical needs
6 have been met; and, two, whatever assurances you can get that
7 they will be met going forward, and in particular, whether he
8 would need to see a doctor and, if so, when that would happen.

9 It sounded like there were some tests that were put
10 off from March to June. If you can find out about those and
11 what they involve and whether they're going forward, I would
12 appreciate it. And if you could, submit a letter let's say in
13 the next two days on that, I would appreciate it. All right?

14 MS. CHOI: Will do, your Honor.

15 THE COURT: All right. Thank you for convening by
16 telephone, and I will reserve judgment, try to issue a decision
17 as quickly as possible, and I hope everybody stays safe and
18 healthy.

19 We are adjourned. Thank you.

20 MS. CHOI: Thank you.

21 MR. SCHNEIDER: Thank you, your Honor. Stay safe and
22 healthy, everybody.

23 (Adjourned)
24
25